

Office of the Secretary of Defense

§ 182.4

(7) Aircraft piracy operations conducted pursuant to title 10, U.S.C.

§ 182.3 Definitions.

The following definitions apply to this part:

Civil authorities. Those elected and appointed officers and employees who constitute the government of the United States, the governments of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, U.S. possessions and territories, and political subdivisions thereof.

Civil disturbance. Group acts of violence and disorder prejudicial to public law and order.

Civilian law enforcement official. An officer or employee of a civilian Federal, State, local, and tribal law enforcement agency with responsibility for enforcement of the laws within the jurisdiction of that agency.

DoD personnel. Federal military officers and enlisted personnel and civilian employees of the Department of Defense.

Domestic emergencies. Emergencies affecting the public welfare and occurring within the 50 states, District of Columbia, Commonwealth of Puerto Rico, U.S. possessions and territories, or any political subdivision thereof, as a result of enemy attack, insurrection, civil disturbance, earthquake, fire, flood, or other public disasters or equivalent emergencies that endanger life and property or disrupt the usual process of government. Domestic emergencies include civil defense emergencies, civil disturbances, major disasters, and natural disasters.

Emergency authority. A Federal military commander's authority, in extraordinary emergency circumstances where prior authorization by the President is impossible and duly constituted local authorities are unable to control the situation, to engage temporarily in activities that are necessary to quell large-scale, unexpected civil disturbances because:

(1) Such activities are necessary to prevent significant loss of life or wanton destruction of property and are necessary to restore governmental function and public order; or

(2) Duly constituted Federal, State, or local authorities are unable or de-

cline to provide adequate protection for Federal property or Federal governmental functions.

Explosives or munitions emergency. A situation involving the suspected or detected presence of unexploded ordnance (UXO), damaged or deteriorated explosives or munitions, an improvised explosive device (IED), other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. Such situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

Law enforcement agency. Any of a number of agencies (outside the Department of Defense) chartered and empowered to enforce U.S. laws in the following jurisdictions: the United States, a State (or political subdivision) of the United States, a territory (or political subdivision) of the United States, a federally recognized Native American tribe or Alaskan Native Village, or within the borders of a host nation.

§ 182.4 Policy.

It is DoD policy that:

(a) The Department of Defense shall be prepared to support civilian law enforcement agencies consistent with the needs of military preparedness of the United States, while recognizing and conforming to the legal limitations on direct DoD involvement in civilian law enforcement activities.

(b) Support of civilian law enforcement agencies by DoD personnel shall be provided in accordance with 18 U.S.C. 112, 351, 831, 1116, 1751, and 1385 (also known and hereinafter referred to as "The Posse Comitatus Act, as amended"); 10 U.S.C. chapter 18; 2 U.S.C. 1970 (for support to the U.S. Capitol Police); and other Federal laws, including those protecting the civil rights and civil liberties of individuals, as applicable.

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(c) The restrictions in § 182.6(a)(1)(iii) shall apply to all actions of DoD personnel worldwide.

(d) Exceptions, based on compelling and extraordinary circumstances, may be granted to the restrictions in § 182.6(a)(1)(iii) for assistance to be provided outside the United States; only the Secretary of Defense or Deputy Secretary of Defense may grant such exceptions.

(e) Requests for law enforcement support shall be evaluated using the criteria in 32 CFR part 185.

§ 182.5 Responsibilities.

(a) The Under Secretary of Defense for Policy (USD(P)) shall establish DoD policy governing defense support of civilian law enforcement agencies and facilitate the coordination of that policy with Federal departments and agencies; State, local, and tribal agencies; and the DoD Components, as appropriate.

(b) The Assistant Secretary of Defense for Homeland Defense and Americas' Security Affairs (ASD(HD&ASA)), under the authority, direction, and control of the USD(P) and in accordance with DoD Directive 5111.13,³ “Assistant Secretary of Defense for Homeland Defense and Americas' Security Affairs (ASD(HD&ASA)),” shall develop, coordinate, recommend, and supervise the implementation of policy for defense support of civilian law enforcement agencies and defense support of civil authorities (DSCA), including law enforcement support activities. In executing this responsibility for DoD law enforcement support activities, the ASD(HD&ASA) shall:

(1) Develop procedures and issue appropriate direction as necessary for defense support of civilian law enforcement agencies in coordination with the General Counsel of the Department of Defense, and in consultation with the Attorney General of the United States (Attorney General), as appropriate, and in accordance with responsibilities assigned in 32 CFR part 185 and DoD Directive 5111.13. This includes tasking the DoD Components to plan for and to commit DoD resources in response to

requests from civil authorities for CDO (such a commitment of DoD resources for CDO must be authorized by the President of the United States and directed by the Secretary of Defense).

(2) Serve as the principal point of contact between the Department of Defense and the Department of Justice for planning and executing CDO.

(3) Coordinate with civilian law enforcement agencies on policies to further DoD cooperation with civilian law enforcement agencies.

(4) Provide guidance for the use of Reserve Component personnel in support of civilian law enforcement agencies, in coordination with the Secretaries of the Military Departments and the Assistant Secretary of Defense for Reserve Affairs (ASD(RA)), and with the Chief, National Guard Bureau (NGB), as appropriate. This will include guidance for use by approving authorities in evaluating the effect on military preparedness of requests for civilian law enforcement assistance that may involve use of the Reserve Components.

(5) Assist in the development of policy regulating plans, procedures, and requirements of the DoD Components with authority over defense resources that may be employed to provide law enforcement support.

(6) Inform the ASD(RA) of all requests for assistance by civilian law enforcement agencies that may be met using Reserve Component personnel and resources.

(i) Inform the Chief, NGB, of all requests for assistance by civilian law enforcement agencies that may be met using NG personnel.

(ii) Coordinate with the ASD(RA) and others as appropriate regarding duty status policies (e.g., performance of duty pursuant to 10 U.S.C. 331–334 and 371–382).

(7) Coordinate with the Chairman of the Joint Chiefs of Staff (CJCS) in advance of the commitment of any Federal military forces.

(8) Coordinate with the Under Secretary of Defense (Comptroller)/Chief Financial Officer, Department of Defense, when providing assistance to civilian law enforcement agencies to ensure an appropriate funding approach in accordance with § 182.6(g).

³ Available at <http://www.dtic.mil/whs/directives/corresp/pdf/511113p.pdf>.